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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,617	03/17/2004	Arthur J. Jur	03-PDA-328(220)	4577

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EXAMINER

BAUER, SCOTT ALLEN

ART UNIT	PAPER NUMBER
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2836

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/802,617	Applicant(s) JUR ET AL.	
	Examiner Scott Bauer	Art Unit 2836	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/10/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 5,414,584) in view of Rosen et al. (US 5,304,761) and further in view of Wilkie, II et al. (US 6,215,654).

3. With regard to Claim 1, Young, in figure 4, teaches a network protector (10) comprising: an enclosure (18); a frame assembly (38) disposed within said enclosure; a plurality of electrical components including a circuit breaker (14) coupled to said frame assembly and having at least one set of main contacts (column 3 lines 29-31) and at least one arc vent (42) associated with set of main contacts; an arc path assembly (78) having a hollow member having at least one open end (82), said hollow member in fluid communication with the arc vent (42); and the hollow member extending beyond the frame assembly (38), whereby arc gasses traveling from said arc chute through said hollow member are exhausted (column 2 lines 7-14).

Young does not teach the use of an arc chute associated with each of the main contacts or that arc gases are exhausted from the breaker, into an enclosure.

Rosen et al., in Figure 2, teaches a circuit breaker containing main contacts wherein an arc chute (32) is associated with each main contact (column 3 lines 15-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Young with Rosen et al., by placing an arc chute as taught by Rosen et al. between the main contact, and contact vent (42) of Young, for the purpose of extinguishing the arc before it enters and damages the hollow member (78).

Wilkie, II et al., in figure 6, teaches a switchgear assembly which contains circuit breakers that vent arc gases (43) into the switchgear enclosure from vents (41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Young in view of Rosen et al. with Wilkie, II et al., by placing the network protector taught by Young in view of Rosen et al. in the switchgear assembly taught by Wilkie, II et al., for the purpose of centralizing the breakers of many networks together thus reducing maintenance time and reducing cost.

In the network device taught by Young in view of Rosen and further in view of Wilkie, II et al., the circuit breaker enclosure taught by Young and containing the arc chutes taught by Rosen et al. are installed in a cell (11) of the switchgear taught by Wilkie, II et al. in such a way that the arc chutes extend vertically and the hollow member extends horizontally. Further, the gases vent from the enclosure taught by Young into the switchgear enclosure taught by Wilkie, II et al.

4. With regard to Claim 11, Young in view of Rosen et al. and further in view of Wilkie, II et al. discloses an arc path assembly for a network protector, said network protector having a plurality of electrical components including a circuit breaker disposed on a frame assembly within an enclosure, said circuit breaker having at least one set of main contacts and at least one generally vertical arc chute associated with said at least one set of main contacts, said arc path assembly comprising: a hollow member having at least one open end and at least one side opening; said side opening structured to be coupled to said at least one arc chute; and said at least one open end extending beyond said frame assembly, whereby arc gasses traveling from said arc chutes pass through said hollow member and are exhausted into said enclosure. The reasons for combining have been stated above for Claim 1.

5. With regard to Claims 2 & 12, Young in view of Rosen et al. and further in view of Wilkie, II et al. discloses the network protector of Claims 1 & 11. Young in view of Rosen et al. further discloses that at least one arc chute extends generally vertically; and the hollow member (78) extends generally horizontally. It is noted that as shown in Figure 4, the hollow member extends vertically and the arc chute extends horizontally. However, without affecting the operation of the device, the enclosure can be installed in such a way as to allow the arc chute to extend vertically and the hollow member to extend horizontally.

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6. With regard to Claim 3 & 13, Young in view of Rosen et al. and further in view of Wilkie, II et al. discloses the network protector of Claims 2 & 12. Rosen et al. further discloses that the circuit breaker includes three sets of main contacts and said at least one arc chute includes three arc chutes, one arc chute being associated with each set of main contacts (column 3 lines 15-24). Young further discloses that the hollow member (78) being coupled to said circuit breaker (14) and wherein said hollow member (78) is in fluid communication with each arc vent (42) and thus in fluid connection with each arc chute (32 as taught by Rosen et al.).

7. With regard to Claims 4, 10, 14 & 20, Young in view of Rosen et al. and further in view of Wilkie, II et al., discloses the network protector of Claims 1, 3, 11 & 13. Young further discloses that the hollow member is made from a non-conductive material (column 3 lines 32-36).

8. With regard to Claim 5 & 15, Young in view of Rosen et al. and further in view of Wilkie, II et al. discloses the network protector of Claim 5 & 15 except that the hollow member (78) is made from Lexan[®], which is a glass fiber reinforced plastic resin.

9. With regard to Claim 6, 8, 16 & 18, Young in view of Rosen et al. and further in view of Wilkie, II et al. discloses the network protector of Claims 1, 5, 11 & 15. Young further discloses that the hollow member includes two open ends (90), each open end extending beyond said frame assembly (38).

10. With regard to Claim 7, 9, 17 & 19, Young in view of Rosen et al. and further in view of Wilkie, II et al. discloses the network protector of Claims 6, 8, 16 & 18. Young further discloses that each open end is disposed within the enclosure.

Response to Arguments

11. Applicant's arguments filed 5/22/2006 have been fully considered but they are not persuasive.

12. Applicants make various arguments in response to the 103(a) rejection as being unpatentable over Young (US 5,414,584) in view of Rosen et al. (US 5,304,761) and Wilkie, II et al. (US 6,215,653). Applicants initially argue that none of the references disclose a "network protector"; the specification teaching that "a network protector" consists of a circuit breaker and additional electrical components such as a control relay." However, the claimed "network protector" is found in the preamble of the claim and as such the recitation has not been given patentable weight. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

If Applicants wish to include the additional limitations of defining the network protector, then the claims should be amended to include the structural makeup of the "network protector." Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants further argue that the references do not teach a frame assembly, particularly that the molded case of Young, cannot be a frame assembly. However, Applicants do not recite in the claims, any limitations of what a frame assembly comprises. The case (38) of Young is seen as a frame assembly in so much as it is a rigid structure designed to give support to an immobile object. Again, should Applicants wish to include further limitations as to the design of the frame assembly, the claim should be amended to include such language.

Applicants further argue that the Young reference does not disclose a plurality of electrical components. However, the Young reference would necessarily have to disclose a plurality of electrical components. Although the drawings found in Young only show a circuit breaker, the breaker would be connected to conductors, which would be reasonably considered an electrical component. As Young states in the background of the invention, the motivation to provide an arc path and vents for conductive gases to a circuit breaker is to prevent a ground fault or a phase-to-phase fault of the line conductors of within an enclosure (Young: column 1 lines 40-43). As such, the Examiner believes that the Young reference does in fact disclose a plurality of electrical components.

Applicants go on to argue that a frame assembly and an enclosure must be separate elements and that a circuit breaker cannot be both a circuit breaker and a frame assembly. In the 103(a) rejection of the previous Office Action, the frame assembly is the molded case (38) of Young and the enclosure is the switchgear enclosure of Wilkie, II et al. Further, Young does not teach that the circuit breaker and the frame assembly are the same element. In fact, Young teaches that the circuit breaker (14) is surrounded by the case (38) (column 3 lines 22-26) and as such the two elements must be separate elements.

Applicants' argument that the cited reference are non-analogous art because they do not teach a network protector are not persuasive because as stated above, the only limitations given to a network protector in claim 1 is that which is recited in the claim.

Applicants' arguments that Rosen teaches away from Young is unpersuasive as the Rosen reference was used only to teach that an arc chute is associated with each main contact. As such, the direction or arc gases as taught by Rosen were not relied upon.

Finally Applicants argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning is unpersuasive as it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bauer whose telephone number is 571-272-5986.


The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 571-272-2058. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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PRIMARY EXAMINER